

## **REMARKS**

### **I. INTRODUCTION**

Claims 5-14, 16, 18-34, 37-39, 41, 45-48, 50, and 52-75 are pending. Claims 56, 62, and 75 are independent claims. No claims have been amended or cancelled in this paper. The Office Action alleged the following grounds for rejecting Applicants' claims:

1. That claims 5-13, 16, 26, 31-34, 45, 47, 56, 57, 59, 61-65, 67-69, 71-73, and 75 are unpatentable under 35 U.S.C. § 103(a) over United States Patent Application No. 2005/00153070 ("Simpson") in view of United States Patent Application No. 2002/003-2603 ("Yeiser");

2. That claims of 14, 58, 60, 66, 70, and 74 are unpatentable under Section 103 over Simpson in view of Yeiser and further in view of United States Patent No. 7,483,886 ("Cheung");

3. That claims 18-25, 27-28, 37, and 41 are unpatentable over Simpson under Section 103 in view of Yeiser and further in view of United States Patent No. 7,295,996 ("Skinner");

4. That claims 38-39 are unpatentable over Simpson under Section 103 in view of Yeiser and further in view of United States Patent No. 7,475,346 ("Bullock"); and

5. That claims 29-30, 46, 48, 50, and 52-55 are unpatentable under Section 103 over Simpson in view of Yeiser and further in view of United States Patent No. 6,269,361 ("Davis").

In view of the following arguments, all claims are believed to be in condition for allowance over the prior art of record, and thus each of the foregoing grounds of rejection should be withdrawn. Therefore, this response is believed to be a complete response to the Office Action, as required by 37 C.F.R. § 111(b). However, Applicants reserve the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of the dependent claims not explicitly addressed herein, in future papers. Further, Applicants do not necessarily acquiesce to any characterization in the Office Action concerning the scope and meaning of their claims, which are believed to speak for themselves. Also, for any instances in which the Examiner took Official Notice in the Office Action, Applicants expressly do not

acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR § 1.104(d)(2).

## **II. ARGUMENT**

### **A. Ground of Rejection No. 1**

#### **1. Claims 56, 62, and 75**

##### **a. Failure of the Cited References to Teach or Suggest All of the Elements Recited in the Claims**

Independent claim 56, rejected as allegedly obvious over the combination of Simpson and Yeiser, is discussed herein as exemplary of claims 62 and 75, which were rejected over the same alleged combination. Claim 56 recites in part “influencing the position adjustment factor by a per-hit fee associated with the affiliated listing.” The Examiner conceded that Simpson fails to disclose the foregoing claim recitation, but contended that Yeiser compensates for the acknowledged deficiency of Simpson. (Office Action, page 4.) In fact, Yeiser discloses no more than “monitoring hits on a streaming video advertising a particular client’s product or services,” and charging the advertiser “on a ‘per hit’ basis.” (Yeiser, paragraph 19.) Thus, at most, Yeiser discloses a per-hit fee associated with advertisements in streaming video. Yeiser makes no teaching or suggestion concerning “a per-hit fee associated with the affiliated listing.” For at least this reason, the rejection of claim 56 must be withdrawn.

Moreover, Yeiser discloses that its per hit fee is used for nothing more than calculating the charge to the advertiser. (Yeiser, paragraph 19.) Yeiser does not teach or suggest that the per hit fee is used to influence any factor related to the position of a listing, nor does Yeiser even teach or suggest that its per hit fee is used to influence any factor related to position or display of its advertisements located within streaming video, or indeed, any factor at all. In sum, Yeiser does not even remotely include any teaching or suggestion of a position adjustment factor or “influencing the position adjustment factor by a per-hit fee.” The rejection of claim 56 must be withdrawn for at least this further reason.

##### **b. Lack Of Reason to Have Combined Simpson and Yeiser**

Additionally, the Examiner has failed to state an adequate reason for the alleged combination of Simpson and Yeiser, nor has the Examiner provided support in the references of

record or by affidavit for the reason that the Examiner provided for combining the references. The Examiner simply stated, without explanation, that one of ordinary skill would have been motivated to combine Simpson and Yeiser “to apply a charge based on a criteria established by the administrator.” (Office Action, page 4.) However, the Examiner apparently has taken Official Notice, and has not provided any support for this alleged motivation. Accordingly, the Examiner is respectfully requested to provide support, in the next Office Action, for the reason given for combining Simpson and Yeiser. Absent such support, the rejection of claim 56 must be withdrawn.

Further, the Examiner has not explained why a desire “to apply a charge based on a criteria established by the administrator” would have motivated one of ordinary skill to have implemented the recitation of claim 56 of “influencing the position adjustment factor by a per-hit fee associated with the affiliated listing.” Indeed, claim 56 does not recite a charge based on a criteria established by an administrator. Therefore, the Examiner’s stated motivation is irrelevant to claim 56. The rejection of claim 56 must be withdrawn for at least this further reason.

For at least any of the foregoing reasons, claim 56, and all claims depending therefrom, are in condition for allowance. Further, without conceding any similarity or dissimilarity and the scope of the claims, independent claims 62 and 75, and all claims depending therefrom, are similarly in condition for allowance.

## **2. Claim 9**

Claim 9 depends from claim 56 and further recites “influencing said position adjustment factor by a relationship between an advertiser and an administrative organization.” The Examiner conceded that Simpson does not teach or suggest the foregoing recitation, but contended that Yeiser compensates for Simpson’s acknowledged deficiencies. (Office Action, page 7.) In fact, Yeiser discloses no more than providing links to advertisers’ websites. (Yeiser, paragraph 81.) Providing such links has nothing to do with “a relationship between an advertiser and an administrative organization,” much less “influencing said position adjustment factor” in any way at all. For at least these reasons, claim 9 is separately patentable, and rejection of claim 9 must be withdrawn.

## **3. Claim 10**

Claim 10 depends from claim 9, and further recites “influencing said position adjustment factor by a length of time relating to said relationship.” The Examiner conceded that Simpson does

not teach or suggest the foregoing recitation, but contended that Yeiser compensates for Simpson's acknowledged deficiencies. (Office Action, page 7.) In fact, as explained above with respect to claim 9, Yeiser discloses no more than providing links to advertisers' websites. (Yeiser, paragraph 81.) Yeiser further discloses that one way in which such links can be organized is according to "media segment date or time." Thus, Yeiser does use the word "time," which is also recited in claim 10. However, apart from that coincidence, Yeiser does not teach or suggest any action based on "a length of time relating to said relationship," much less "influencing said position adjustment factor" by any length of time. For at least these reasons, claim 10 is separately patentable, and rejection of claim 10 must be withdrawn.

#### **4. Claim 11**

Claim 11 depends from claim 9, and further recites "influencing said position adjustment factor by a number of listings relating to said relationship." The Examiner conceded that Simpson does not teach or suggest the foregoing recitation, but contended that Yeiser compensates for Simpson's acknowledged deficiencies. (Office Action, page 8.) In fact, as explained above with respect to claim 9, Yeiser discloses no more than providing links to advertisers' websites. (Yeiser, paragraph 81.) Yeiser does not disclose taking any action based on "a number of listings relating to said relationship," much less does Yeiser teach or suggest "influencing said position adjustment factor by a number of listings relating to said relationship." For at least these reasons, claim 11 is separately patentable, and rejection of claim 11 must be withdrawn.

#### **5. Claim 12**

Claim 12 depends from claim 9, and further recites "influencing said position adjustment factor by a lifetime fee total relating to said relationship." The Examiner contended that Simpson discloses this claim recitation. (Office Action, page 8.) However, in reality Simpson discloses no more than a database that "can include information on both member businesses that have paid membership fees as well as non-member businesses." (Simpson, paragraph 58.) Simpson includes no teaching or suggestion related to "a lifetime fee total," and certainly does not teach or suggest "influencing said position adjustment factor by a lifetime fee total relating to said relationship." For at least these reasons, claim 12 is separately patentable, and rejection of claim 12 must be withdrawn.

**6. Claim 16**

Claim 16 depends from claim 56 and further recites “influencing said position adjustment factor by a time of year.” The Examiner conceded that Simpson does not teach or suggest the foregoing recitation, but contended that Yeiser compensates for Simpson’s acknowledged deficiencies. (Office Action, page 9.) In fact, Yeiser does not include any teaching or suggestion relating to “a time of year” at all. At most, Yeiser discloses purchasing “media time” or “air time” during a which a “media segment” may be aired. Purchasing a block or blocks of time for airing a media segment plainly has nothing whatsoever to do with “influencing said position adjustment factor by a time of year.” For at least these reasons, claim 16 is separately patentable, and rejection of claim 16 must be withdrawn.

**7. Claims 61, 63, 64, and 65**

Claim 61, rejected over the alleged combination of Simpson and Yeiser, depends from claim 56, and further recites “calculating the position adjustment factor without human intervention.” In the Office Action, the Examiner failed to specifically address, or apply any of the cited references to, claim 61. For at least this reason, the rejection of claim 61 must be withdrawn. Likewise, the Examiner failed to specifically address, or apply any of the cited references to, claims 63, 64, or 65, and therefore the rejection of these claims likewise must be withdrawn.

**8. Claims 57 and 73**

Claim 57 depends from claim 56 and recites that “calculating the position adjustment factor includes accessing an advertiser account record.” Claim 73 depends from claim 62 includes a similar recitation. The Examiner conceded that “Simpson does not disclose . . . [that] calculating the position adjustment factor includes accessing an advertiser account record.” (Office Action, page 4.) The Examiner then cited Yeiser as allegedly compensating for the acknowledged deficiencies of Simpson. However, Yeiser discloses no more than a “leads database” that is “accessible . . . for contacting the potential clients in an effort to generate orders” and where “leads can then be manipulated to create reports or sent electronically to other departments.” (Yeiser, paragraph 29.) Thus, the leads database of Yeiser, even if it includes “an advertiser account record,” which Applicants do not concede, has nothing to do with “calculating the position adjustment factor.” At most, the leads database of Yeiser is accessed to generate orders and provide

reports. Further, as noted above, Yeiser includes no teaching whatsoever of a position adjustment factor. For at least these reasons, Yeiser cannot teach or suggest “calculating the position adjustment factor,” or that such calculation “includes accessing an advertiser account record.”

For at least the foregoing reasons, claims 57 and 73 are separately patentable, and the rejections of these claims must be withdrawn.

**9. Claims 67 and 68**

Claim 67 and 68 each depend from claim 62, and each recite in part that “the position adjustment factor is negative,” along with other recitations in each claim that are different from one another. The Examiner contended that Simpson anticipates this recitation. (Office Action, page 5.) However, Simpson does not include any teaching or suggestion related to a negative factor of any kind. For example, the portion of Simpson cited by the Examiner simply discloses that “weighting factors can result in the presentation to a customer of both member and non-member businesses because both types of businesses are relevant to a customer’s search.” (Simpson, paragraph 49.) Simpson goes on to explain that “information presented to a customer on non-member businesses can, of course, be more limited and static than that presented for member businesses.” (Simpson, paragraph 49.) Thus, Simpson does not teach or suggest any differences in the weighting that may lead to presentation of a member or non-member business; Simpson merely suggests that provided information relating to each of the two categories may differ. Moreover, nowhere does Simpson teach or suggest negative weightings, or negative factors of any kind. For at least these reasons, claims 67 and 68 are separately patentable, and the rejections of these claims must be withdrawn.

**B. Ground of Rejection No. 2: Claims 14, 58, 60, 66, 70, and 74**

Claims 14, 58, 60, 66, 70, and 74 were each rejected over the alleged combination of Simpson, Yeiser, and Cheung. Each of these claims is patentable at least by reason of its dependence from one of independent claims 56, 62, or 75. Therefore, the rejection of these claims must be withdrawn.

**C. Ground of Rejection No. 3: Claims 18-25, 27-28, 37, and 41**

Claims 18-25, 27-28, 37, and 41 were each rejected over the alleged combination of Simpson, Yeiser, and Skinner. Each of these claims is patentable at least by reason of its

dependence from one of independent claims 56, 62, or 75. Therefore, the rejection of these claims must be withdrawn.

Further, these claims are separately patentable over the cited references. For example, claim 18 depends from claim 56, and further recites that “at least one of said listings in said plurality of listings is associated with a fixed fee value.” The Examiner conceded that Simpson and Yeiser do not disclose the foregoing claim recitation. (Office Action, pages 12-13.) The Examiner then contended that Skinner compensated for the acknowledged deficiencies of Simpson and Yeiser. However, Simpson discloses no more than that banner advertisements on the Internet may be priced on “an impression basis” or a “fixed fee basis.” (Simpson, column 1, lines 49-55.) Thus, Simpson does not include any teaching or suggestion related to “one of said listings in said plurality of listings,” much less does Simpson teach or suggest any association concerning one of the recited listings. Therefore, claim 18 is separately patentable, and the rejection of claim 18 must be withdrawn for at least this reason. Similar reasoning applies to the rejection of claim 19.

Moreover, if the rejections of their claims are maintained, Applicants believe that they have at their disposal additional arguments concerning the inapplicability of Skinner to other claims for which it is cited in the Office Action.

**D. Ground of Rejection No. 4: Claims 38-39**

Claims 38 and 39 were each rejected over the alleged combination of Simpson, Yeiser, and Bullock. Claim 38 depends from claim 37, which in turn depends from claim 56. Claim 39 depends from claim 38. Each of these claims is patentable at least by reason of its dependence from independent claim 56. Therefore, the rejection of these claims must be withdrawn.

**E. Ground of Rejection No. 5: Claims 29-30, 46, 48, 50, and 52-55**

Claims 29-30, 46, 48, 50, and 52-55 were each rejected over the alleged combination of Simpson, Yeiser, and Davis. Each of these claims is patentable at least by reason of its dependence from one of independent claims 56, 62, or 75.

Further, each of these claims is separately patentable over the cited references. For example, claims 29 and 30 each depend from claim 56, and respectively recite “influencing said at least one priority metric by a category factor” and “influencing said at least one priority metric by a geography factor.” Claim 52 also depends from claim 56, and recites that “said administrative rules

include at least one of: a category hierarchy and a geography hierarchy.” The Examiner contended that Davis discloses the foregoing claim recitations. (Office Action, page 15.) However, Davis discloses no more than that an “advertiser may invoke routines to view a history of past account transactions.” (Davis, column 13, lines 53-54.) Davis does not include any teaching or suggestion related to a category factor, a geography factor, a category hierarchy, or a geography hierarchy, much less influencing a priority metric according to such factors, or administrative rules including such hierarchies. For least these reasons, claims 29, 30, and 52 are separately patentable.

Further for example, claim 46 depends from claim 56 and further recites that “said position adjustment factor relates to an advertiser profile.” The Examiner contended that Davis discloses the foregoing claim recitations. (Office Action, page 15.) In fact, Davis discloses no more than an “advertiser’s access profile.” (Davis, column 13, lines 46-47.) Even if Davis’ “advertiser’s access profile” is the same as the recited “advertiser profile,” which Applicants do not concede, Davis includes no teaching or suggestion of a “position adjustment factor” or that the position adjustment factor of “relates to an advertiser profile.” For least these reasons, claim 46 is separately patentable.

Moreover, if the rejections of their claims are maintained, Applicants believe that they have at their disposal additional arguments concerning the inapplicability of Davis to other claims for which it is cited in the Office Action.



### **III. CONCLUSION**

All rejections have been addressed. In view of the above, the presently pending claims are believed to be in condition for allowance. Accordingly, reconsideration and allowance are respectfully requested and the Examiner is respectfully requested to pass this application to issue. It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013, under order number Order No. 66703-0016. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

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Respectfully submitted,

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